

Message Text

CONFIDENTIAL

PAGE 01 BONN 14395 01 OF 02 111459Z

51

ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 INRE-00 SSO-00 NSCE-00 USIE-00

CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03 NSAE-00 NSC-07

PA-04 RSC-01 PRS-01 SP-03 SS-20 SAJ-01 OMB-01 IO-14

MMS-04 DRC-01 /107 W

----- 103857

O P 111443Z SEP 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 4956

INFO USMISSION BERLIN IMMEDIATE

USMISSION NATO BRUSSELS PRIORITY

AMEMBASSY LONDON PRIORITY

AMEMBASSY MOSCOW PRIORITY

AMEMBASSY PARIS PRIORITY

C O N F I D E N T I A L SECTION 01 OF 02 BONN 14395

E.O. 11652: GDS

TAGS: PGOV, GE, GW, US, UK, FR, UR

SUBJECT: BRUECKMANN CASE

REFS: (A) BERLIN 1543

(B) BONN 14104

(C) BONN 13682

(D) BONN 13528

(E) BERLIN 1451

BEGIN SUMMARY: WITH RECENT MESSAGE ON THE BRUECKMANN CASE FOCUSING PRIMARILY ON THE TECHNICAL/LEGAL ASPECTS OF THE VARIOUS POSSIBLE SOLUTIONS, IT SEEMS TO US DESIRABLE AND USEFUL TO NOW ADDRESS THE CASE FROM A SOMEWHAT MORE POLITICAL PERSPECTIVE. IT IS OUR JUDGEMENT THAT THIS SEEMINGLY OBSCURE CASE COULD BECOME A FAIRLY SERIOUS FRG-ALLIED POLITICAL ISSUE UNLESS WHAT BONN PERCEIVES TO BE ITS NEEDS ON IT ARE SOMEHOW MET. WE THINK FRG-PROPOSED AMENDMENT
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 14395 01 OF 02 111459Z

TO 1953 LAW WITH TAKE OVER IN BERLIN REMAINS BEST

POSSIBLE SOLUTION IF COUPLED WITH APPROPRIATE AK
RESERVATIONS. UK AND FRENCH HAVE NOW TAKEN THIS
POSITION IN TRIPARTITE MEETING. END SUMMARY

1. EVEN THOUGH IT WAS WSB LOCAL AUTHORITIES THEM-
SELVES WHO FIRST APPLIED THE 1953 LAW ON JUDICIAL
AND OFFICIAL ASSISTANCE AGAINST BRUECKMANN AND
BROUGHT HER BEFORE THE KAMMERGERICHT IN RESPONSE TO
A GDR ARREST WARRANT, IT WAS NOT LONG BEFORE THOSE
SAME AUTHORITIES, FEDERAL GOVERNMENT OFFICIALS, AND
COALITION POLITICIANS CONCLUDED THAT IT WOULD BE
A GROSS POLITICAL MISTAKE TO SEND BRUECKMANN BACK
TO THE GDR. THE SENAT AND THE BONN GOVERNMENT (AND
THE ALLIES, TOO) HOPED THROUGHOUT THE EARLIER PERIOD
OF THE CASE THAT THE KAMMERGERICHT WOULD RESPOND TO
THE MANY MOTIONS AND APPEALS (AND POLITICAL PRESSURE
BROUGHT BY THE SENAT) MADE ON BRUECKMANN'S BEHALF AND
REVERSE ITSELF; THIS HAS NOT HAPPENED AND IT IS NOW
NOT TO BE EXPECTED OR EVEN HOPED THAT IT WILL HAPPEN.
OVER THE PAST SEVERAL MONTHS THE CDU/CSU, SUPPORTED
BY THE RIGHTEST PRESS (DIE WELT, ETC), HAS BEEN
HAMMERING AT THE THEME THAT BRUECKMANN IS A VICTIM
OF DETENTE AND THAT IT WOULD BE CRUEL AND INHUMAN
TO SEND HER BACK WHERE JUSTICE IS UNCERTAIN, AT BEST.
THE ATMOSPHERE CREATED BY THE GUILLAUME CASE ASSISTED
IN THIS CAMPAIGN. GIVEN THIS SITUATION, AND WITH
ELECTIONS SCHEDULED IN WSB FOR SPRING 1975, MAYOR
SCHUETZ AND HIS PARTY COLLEAGUES HAVE COME TO THE
CONCLUSION THAT FAILURE TO PROPERLY RESOLVE THE CASE
BEFORE THE ELECTIONS COULD PUT THEIR JOBS AND POLITICAL
FUTURES INTO JEOPARDY. IN VIEW OF THEIR OWN HELPLESS-
NESS (REFTELS) THEY HAVE TURNED TO BONN FOR HELP.
IN THE MEANTIME, THE CDU/CSU PLACED DIRECT PRESSURE
ON BONN BY KEEPING UP A DRUMFIRE OF PARLIAMENTARY
QUESTIONS AND BY INTRODUCING A BILL, AMENDING THE 1953
LAW, WHICH WOULD ALLOW BERLIN AUTHORITIES TO "SAVE"
BRUECKMANN. IT IS IN THE FEDERAL GOVERNMENT'S RESPONSE
TO THE SENAT REQUESTS, AND TO PRESS AND OPPOSITION
PRESSURE INCLUDING THE CDU/CSU BILL, THAT THE GERMAN
PROBLEM HAS BECOME AN ALLIED ONE AS WELL: NONE OF THE
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 14395 01 OF 02 111459Z

SOLUTIONS YET CONCEIVED WOULD LEAVE THE ALLIES COMPLETE-
LY OUT OF THE PICTURE. AND IN AN EFFORT TO BUY TIME
AND WORK OUT A SOLUTION AGREEABLE TO THE ALLIES, THE
FRG IN EARLY SUMMER ADDED AN ADDITIONAL PRESSURING
FACTOR: BONN MADE A DEAL WITH THE OPPOSITION THAT IF
THE CDU/CSU WOULD NOT PRESS FOR CONSIDERATION OF ITS
BILL BY THE BUNDESTAG LEGAL COMMITTEE PRIOR TO THE
SUMMER RECESS, THE GOVERNMENT WOULD INTRODUCE IN THE

FALL A BILL WHICH WOULD HAVE THE SAME RESULT. THE
DRAFT WHICH HAS BEEN PROPOSED TO THE ALLIES (REFTELS)
WOULD BE THIS BILL.

2. THE BASIC IDEA OF THIS DRAFT, OF COURSE, IS TO
GIVE THE PUBLIC PROSECUTOR ADDITIONAL POWERS TO ENABLE
HIM TO REOPEN THE CASE HIMSELF (THE POSSIBILITY OF

CONFIDENTIAL

NNN

CONFIDENTIAL

PAGE 01 BONN 14395 02 OF 02 111505Z

51

ACTION EUR-25

INFO OCT-01 ISO-00 EURE-00 INRE-00 SSO-00 NSCE-00 USIE-00

CIAE-00 DODE-00 PM-07 H-03 INR-11 L-03 NSAE-00 NSC-07

PA-04 RSC-01 PRS-01 SP-03 SS-20 SAJ-01 OMB-01 IO-14

MMS-04 DRC-01 /107 W

----- 104016

O P 111443Z SEP 74

FM AMEMBASSY BONN

TO SECSTATE WASHDC IMMEDIATE 4957

INFO USMISSION BERLIN IMMEDIATE

USMISSION NATO BRUSSELS PRIORITY

AMEMBASSY LONDON PRIORITY

AMEMBASSY MOSCOW PRIORITY

AMEMBASSY PARIS PRIORITY

C O N F I D E N T I A L SECTION 02 OF 02 BONN 14395

APPEAL TO THE BUNDESGERICHTSHOF WOULD ALSO BE PROVIDED
FOR, BUT THIS WOULD NOT BE POSSIBLE IN THE
BRUECKMANN CASE SINCE THE TIME LIMIT WOULD HAVE
EXPIRED). IF THE LAW WERE TO BE ENACTED AND TAKEN
OVER BY MANTELGESETZ IN THE WSB, THE PUBLIC PROSE-
CUTOR (ACCORDING TO A SCENARIO WORKED OUT BY THE
SENAT AND THE FEDERAL GOVERNMENT) WOULD MAKE USE OF
A PROVISION ALREADY IN THE LAW (THAT THE EXECUTION
OF THAT LAW SHALL NOT HAVE AN EFFECT CONTRARY TO
OTHER LAWS ON THE BOOKS) TO ORDER THE KAMMERGERICHT

DECISION QUASHED AND THE CASE REOPENED BASED ON THE FACT THAT THE GIRL CANNOT BE RETURNED TO THE GDR UNTIL COMPLETION OF HUMAN RIGHTS COMMISSION (AND POSSIBLY, COURT) PROCEEDINGS. THESE PROCEEDINGS MAY TAKE ANOTHER 6-12 MONTHS WHICH WOULD MEAN HER CUSTODY (SHE WAS JAILED ON MAY 10, 1973) WOULD BE FAR IN EXCESS OF THE SIX MONTH PROVISION OF FRG LAW (CONSIDERATIONS NOTED PARA 3 REFTEL (A) WOULD NOT BE BINDING ON PUBLIC PROSECUTOR IN THIS SITUATION).
CONFIDENTIAL

CONFIDENTIAL

PAGE 02 BONN 14395 02 OF 02 111505Z

SCENARIO WOULD THEN CONTINUE AS SET OUT IN REFTEL (A), PARA 3.

3. FRENCH AND BRITISH ARE NOW ON RECORD TRIPARTITELY THAT THE FRG PROPOSAL, WITH APPROPRIATE ALLIED SAFEGUARDS (REFTELS), IS THE MOST ACCEPTABLE OF THE CONCEIVABLE SOLUTIONS. THIS SOLUTION IS CONSIDERED TO BE LEAST LIKELY TO CAUSE US PROBLEMS WITH THE SOVIETS: THE ORDER OF THE KAMMERGERICHT WAS BASED ON A 1953 FRG LAW TAKEN OVER IN BERLIN; A 1974 LAW TAKEN OVER IN BERLIN AMENDING THE ORIGINAL STATUTE SHOULD NOT BE GROUNDS FOR COMPLAINT. ANOTHER 'LEGISLATIVE' SOLUTION, WHICH WAS ORIGINALLY ADVOCATED BY THE BRITISH, WOULD BE TO LEGISLATE THE TERMS OF THE FEDERAL CONSTITUTIONAL COURT'S (FCC) ADVISORY OPINION IN THE BRUECKMANN CASE. THIS COURSE, IT IS AGREED IN BONN, WOULD BE EVEN MORE QUESTIONABLE AS IT WOULD BE A CLEAR-CUT CASE OF FRG LEGISLATING FOR EFFECT ONLY ON BERLIN AS THE FCC DECISION IS ALREADY BINDING IN FRG.

4. CONCLUSION AND ACTION REQUESTED: IT IS OUR JUDGMENT THAT THE FEDERAL GOVERNMENT AND THE BERLIN SENAT ARE CONVINCED THEY CANNOT POLITICALLY AFFORD TO LET THE BRUECKMANN CASE WIND ON THROUGH THE BERLIN ELECTIONS. A VERY REAL TIME LIMIT WAS CREATED WHEN THE FRG BOUGHT TIME EARLY THIS SUMMER FROM THE OPPOSITION IN EXCHANGE FOR AGREEING TO INTRODUCE IN THE FALL A BILL WHICH WOULD EFFECT RELIEF FOR BRUECKMANN. MAYOR SCHUETZ HAS REPEATEDLY RAISED WITH USBER THE DANGERS TO HIMSELF AND TO SPD THERE IF THE CASE IS NOT PROPERLY RESOLVED, AND FRG BONN GROUP AND JUSTICE MINISTRY REPS HAVE TOLD ALLIES OF INVOLVEMENT IN MATTER OF HIGHEST FRG OFFICIALS, INCLUDING CHANCELLOR SCHMIDT. REFUSAL OF ALLIES TO BE REASONABLY FORTHCOMING IN AGREEING TO SOLUTION COULD WELL RESULT IN FAIRLY SERIOUS FRG/ ALLIED PROBLEMS, GIVEN PRESSURES GERMANS PERCEIVE THEMSELVES TO BE UNDER. IF ALLIES AGREE TO FRG PROPOSAL (AND TWO OF THE THREE ARE PREPARED TO DO SO)

WE BELIEVE WE WOULD BE IN GOOD POSITION VIS-A-VIS THE
SOVIETS: WE HAVE TOLD THEM WE WOULD NOT ALLOW
CONFIDENTIAL

CONFIDENTIAL

PAGE 03 BONN 14395 02 OF 02 111505Z

IMPROPER FRG ACTION IN MATTER, BUT WE HAVE NOT SAID
THAT BERLIN TAKE OVER OF FRG LEGISLATION IN ACCORDANCE
WITH ESTABLISHED PROCEDURES IS PROSCRIBED. AND IN
THIS CASE THE LEGISLATION IN QUESTION, WHILE HAVING
OBVIOUS IMMEDIATE EFFECT IN A CASE IN BERLIN' WOULD
ALSO HAVE GENERAL APPLICABILITY IN FRG AS WELL, BRINGING
ORIGINAL 1953 LAW INTO LINE WITH GENERAL BODY OF FRG
CRIMINAL PROCEDURE WHICH, UNLIKE 1953 LAW IN ITS PRESENT
FORM, PERMITS APPEALS FROM HIGHER LAND COURTS TO
BUNDESGERICHTSHOF. EMBASSY, THEREFORE, RECOMMENDS
DEPARTMENT AGREE TO FRG PROPOSAL WITH SAFEGUARDS NOTED
REFTEL. EMBASSY WOULD THEN PROCEED AT ONCE TO
COORDINATE LINE WITH UK AND FRENCH AND THEN TO BEGIN
IN BONN GROUP DEVELOPMENT DETAILED SCENARIO.
HILLENBRAND

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, COURTS, TRIALS
Control Number: n/a
Copy: SINGLE
Draft Date: 11 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: golinofr
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BONN14395
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D740253-0197
From: BONN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740957/aaaabwef.tel
Line Count: 246
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EUR
Original Classification: CONFIDENTIAL
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators:
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: n/a
Reference: (A) BERLIN 1543
Review Action: RELEASED, APPROVED
Review Authority: golinofr
Review Comment: n/a
Review Content Flags:
Review Date: 03 APR 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <03 APR 2002 by collinp0>; APPROVED <02 JUL 2002 by golinofr>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: BRUECKMANN CASE
TAGS: PGOV, GC, GE, US, UK, FR, UR, (BRUECKMANN, INGRID)
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005